

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0562 CG
Denial of Charity Gaming Qualification Application

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Charity Gaming - Qualified Organization

Authority: IC 4-32-6-20; IC 6-8.1-1-1; IC 6-8.1-5-1; IC 27-11-2-3; IC 27-11-7-4; Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind. App. 5 Dist. 1993).

Modern Woodmen of America (hereinafter referred to as Petitioner) protest the Department's denial of its license to conduct charity gaming.

STATEMENT OF FACTS

The Petitioner is a fraternal life insurance society located in Rock Island, Illinois. The Petitioner submitted its Indiana Charity Gaming Qualification Application (CG-1) on August 13, 1999 (Department's Exhibit 1). The Department's denial was dated October 7, 1999 (Department's Exhibit 2). The Petitioner filed its protest on October 22, 1999. The Petitioner's protest was filed in a timely manner. An administrative hearing was held on March 29, 2000. The transcript of the hearing was received on April 13, 2000.

Charity Gaming - Qualified Organization

DISCUSSION

The Petitioner protests the Department's denial of its application for an Indiana Charity Gaming License based upon the Department's determination that the taxpayer had not met the requirements of IC 4-32-6-20. Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim that the entity does not

qualify for a license is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

Indiana Code section 4-32-6-20 provides:

(a) 'Qualified organization' means:

(1) a bona fide religious, educational, senior citizen, veterans, or civic organization operating in Indiana that:

(A) operates without profit to the organization's members;

(B) is exempt from taxation under Section 501 of the Internal Revenue Code; and

(C) has been continuously in existence in Indiana for at least five (5) years or is affiliated with a parent organization that has been in existence in Indiana for at least five (5) years...

The Department's witness stated that the Petitioner was not a bona fide civic organization operating in Indiana as is required by IC 4-32-6-20 (Record at 12). Lines four (4) and five (5) of Indiana's form CG-1 require the applicant to provide an Indiana taxpayer identification number and an Indiana not-for-profit registration number. The Petitioner used its correct taxpayer identification number but used its Illinois tax registration number in lieu of an Indiana not-for-profit number because they did not possess one (Record at 29). Without an Indiana not-for-profit number the Department was correct in denying the Petitioner's application based upon the fact that the organization had not been given not-for-profit status by the Department.

The Petitioner states that according to IC 27-11-7-4 it is a charitable and benevolent institution and is therefore a qualified organization. The Petitioner argues that this status was conferred upon it by the issuance of a Certificate of Authority from the Department of Insurance State of Indiana office of the Insurance Commissioner on October 6, 1978 (Petitioner's Exhibit A). Indiana Code section 27-11-7-4 states, "Every society organized or licensed under this article is declared to be a charitable and benevolent institution, and **all of its funds shall be exempt from all and every state, county, district, municipal, and school tax** other than taxes on real estate not occupied by a society in carrying on its business." (emphasis added). The Petitioner argues that as a result of the Certificate of Authority issued by the Department of Insurance it is a qualified organization for charity gaming purposes. The Petitioner also states that they are exempt from taxation at the federal level (see Petitioner's Exhibit A), and that they have been in continuous existence since 1896; therefore, meeting all the requirements of IC 4-32-6-20.

Indiana Code section 27-11-7-4, cited by the Petitioner, does state that all of the funds of a fraternal benefit society are exempt from all taxes state and local; however, the charity gaming laws are not found in IC 6-8.1-1-1 as a listed tax. Likewise, IC 27-11-7-4 does declare that a fraternal benefit society organized under Article 11 is declared to be a charitable and benevolent institution. A thorough review of Article 11 of Title 27 reveals that a fraternal benefit society, "**shall operate for the benefit of members and their**

beneficiaries by: (1) providing benefits... and operating... for the benefit of its members...” (emphasis added). See IC 27-11-2-3. The record at pages 29 through 31 is replete with references to direct financial benefits received by both the members and their beneficiaries. Indiana Code section 4-32-6-20 states that a qualified organization means an organization operating in Indiana that: “(A) operates without profit to the organization’s members.” As long as the Petitioner continues to operate as a fraternal benefit society pursuant to Title 27 Article 11 of the Indiana Code and provide direct financial benefits to its members, it cannot meet the requirements of a qualified organization.

FINDING

The Petitioner’s protest is denied.

BRk/MR/sb 001206